

CONNECTICUT SITING COUNCIL
DOCKET NO. 345

IN THE MATTER OF:

AN APPLICATION OF CELLCO PARTNERSHIP d/b/a/ VERIZON WIRELESS
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE
AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY
OFF EXETER DRIVE, STERLING, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

Submitted by: Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
(860) 275-8200

January 7, 2008

POST-HEARING BRIEF

Table of Contents

I.	<u>INTRODUCTION</u>	1
II.	<u>FACTUAL BACKGROUND</u>	2
	A. Pre-Application History.....	2
	B. Local Contacts	3
	C. Tower Sharing	3
	D. The Sterling Facility	4
III.	<u>THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50p FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED</u>	4
	A. A Public Need Exists for the Sterling Facility	5
	B. Nature of Probable Environmental Impacts.....	6
	1. <u>Natural Environment and Ecological Balance</u>	6
	2. <u>Public Health and Safety</u>	6
	3. <u>Scenic Values</u>	7
	4. <u>Historical Values</u>	8
	5. <u>Recreational Values</u>	8
	6. <u>Forests and Parks</u>	8
	7. <u>Air and Water Quality</u>	9
	8. <u>Fish and Wildlife</u>	9
	C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts.....	10
IV.	<u>CONCLUSION</u>	11

I. INTRODUCTION

On August 24, 2007, MCF Communications bg, Inc. ("MCF") and Cellco Partnership d/b/a Verizon Wireless ("Cellco") (collectively the "Applicant") filed with the Connecticut Siting Council ("Council") an application (the "Application") for a certificate of environmental compatibility and public need ("Certificate"), pursuant to Sections 16-50g et seq. of the Connecticut General Statutes ("Conn. Gen. Stat."), for the construction, maintenance and operation of a wireless telecommunications facility off Exeter Drive in the Town of Sterling ("Sterling" or "Town") (Applicant's Exhibit 1 ("App. 1")). The "Sterling Facility" would provide Cellco customers with much needed coverage along Routes 14 and 14a, as well as local roads in Sterling. (App. 1, pp. 1-2). Cellco's network currently experiences significant coverage gaps, at both cellular and PCS frequencies in Sterling between its existing Plainfield North, Plainfield North 2 and Plainfield cell sites to the west and the Rhode Island state line to the east. (App. 1, pp. 7-8, Tab 6). These coverage problems must be resolved in order for Cellco to continue to provide high-quality, uninterrupted, and reliable wireless telecommunications coverage within its service area consistent with its Federal Communications Commission ("FCC") license and the demands of its wireless telecommunications users. (App. 1, pp. 6-7).

The proposed Sterling cell site (the "Site") would consist of a 70' x 70' fenced compound within a 200' x 200' leased area in the southeasterly portion of an approximately 10.83-acre Town-owned parcel off Exeter Drive (the "Property"). The Property lies in the Town's Industrial Park across the street from the Exeter Energy Power Plant. (App. 1, pp. 2 and 17). As proposed, the 140-foot monopole tower would be capable of supporting antennas of four wireless carriers and the Town. (App. 1, pp. 2 and 11).

The Council conducted a public hearing on the Application on December 6, 2007.

(Transcript – Afternoon Session (“Tr. 1”) p. 2). Prior to the afternoon session of the hearing, the Council and its staff visited the Site. At the Council’s request, the Applicant caused a balloon to be flown during the site visit at the proposed tower height. (App. 1, p. 14; Tr. 1, p. 11).

This post-hearing brief is filed on behalf of the Applicant pursuant to Section 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”) and the Council’s directives.

(Transcript – Evening Session (“Tr. 2”), p. 14). This brief evaluates the Application in light of the review criteria set forth in Section 16-50p of the Connecticut General Statutes.

II. FACTUAL BACKGROUND

A. Pre-Application History

On October 21, 2001, MCF filed an application with the Council for a Certificate to construct a telecommunications tower for Sprint Nextel on Town-owned property approximately 940 feet southeast of the Property. This tower proposal was approved by the Council on April 3, 2002 in Docket No. 216. (App. 1, p. 10). Sprint Nextel, the only carrier interested in the Docket No. 216 tower proposal at that time did not proceed with development of the cell site and the Council’s Docket No. 216 Certificate subsequently expired. After the expiration of the Docket No. 216 Certificate, MCF and the Town modified their lease, relocating the tower site to the Property. Cellco determined that the new location for the proposed Sterling Facility would resolve its coverage problems along Routes 14 and 14a, as well as local roadways in Sterling. Cellco’s existing Plainfield facilities (Plainfield North, Plainfield North 2 and Plainfield cell sites) cannot satisfy Cellco’s coverage objectives in the area. (App. 1, pp. 7-8, Tab 6; Tr. 1, p. 23). Cellco currently maintains a number of facilities on existing towers in Plainfield, to the west. None of

these existing towers, however could satisfy Cellco's coverage objectives in Sterling. (App. 1, pp. 9-10, Tab 6).

B. Local Contacts

As stated above, both the previous (Council Docket No. 216) and current tower proposals are located on land owned by the Town. MCF commenced the local input process for the Docket No. 345 proposal on July 13, 2007 by meeting with Russell Gray, First Selectman for the Town, to discuss its plans for the development of the Sterling Facility. MCF and Cellco provided the Town with copies of certain technical information summarizing its plans for the Sterling Facility in accordance with Council requirements. (App. 1, pp. 10-11 and 19).

By letter dated July 16, 2007, the Town agreed to waive the 60-day local review period and permit MCF and Cellco to proceed with the application to the Council. (App. 1 p.19, Tab 11). As evidenced by the First Selectman's July 16, 2007 letter and by testimony at the December 6, 2007 public hearing, the Application has received overwhelming support from municipal officials in the Town. (App. 1, Tab 11; Tr. 1, pp. 6-15).

C. Tower Sharing

Consistent with its business purpose, MCF regularly explores opportunities to share its towers with all wireless service providers. MCF has designed the 140-foot tower so that it could be shared by as many as four wireless carriers and the Town. To date, only Cellco and AT&T have expressed any interest in sharing the Sterling Facility.¹ (App. 1, p. 11; Tr. pp. 31-32). MCF would also make space available to the Town for its public safety communications providers. (App. 1, p. 11; Tr. 1, pp. 31-32).

¹ Although AT&T expressed an interest in sharing the proposed Sterling tower, it did not intervene, or participate in the Docket No. 345 proceeding and has not identified a height needed for its antennas.

D. The Sterling Facility

The Sterling Facility would consist of a 70' x 70' fenced compound within a 200' x 200' leased area located in the southeasterly portion of the approximately 10.83 acre Town-owned parcel. (App. 1, Tab 1, p.1). At the Site, MCF would construct a 140-foot self-supporting monopole tower. (App. 1, p. 2, Tab 1, p. 1). Cellco would install a total of twelve (12) antennas (six cellular and six PCS) on a low-profile platform or on T-arms at a centerline height of 137 feet. (App. 1; Tab 1, Tower Elevation Drawing; Tr. 1, pp. 68-71). Equipment associated with the antenna would be housed in a 12' x 30' equipment shelter located near the base of the tower. (App. 1, p. 2; Tab 1 – Project Plans). The Site will be surrounded by an eight-foot security fence and gate. (App. 1, Tab 1 – Project Plans). Vehicular access would extend from Exeter Drive over a new gravel driveway a distance of approximately 70 feet to the cell site. (App. 1; Tab 1, p. 1). Utility service would extend overhead from existing service along Exeter Drive. (App. 1, p. 2, Tab 1, p. 1).

III. THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50p FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Section 16-50p of the Public Utility Environmental Standards Act (the “Act”), Conn. Gen. Stat. §16-50g et seq., sets forth the criteria for Council decisions in Certificate proceedings and states, in pertinent part:

In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate . . . The council shall file, with its order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the need; (2) the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological

balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish and wildlife; (3) why the adverse effects or conflicts referred to in subdivision (2) of this subsection are not sufficient reason to deny the application. . . .

Conn. Gen. Stat. § 16-50p(a).

Under Section 16-50p, the Applicant must satisfy two key criteria in order for the Application to be granted and for a Certificate to issue. First, the Applicant must demonstrate that there is a “public need for the facility.” Conn. Gen. Stat. § 16-50p(a)(1). Second, the Applicant must identify “the nature of the probable environmental impact” of the proposed facility through review of the numerous elements specified in Conn. Gen. Stat. § 16-50p(a)(2), and then demonstrate that these impacts “are not sufficient reason to deny the application.” Conn. Gen. Stat. § 16-50p(a)(3). The evidence in the record for this docket establishes that the above criteria have been satisfied and that the Applicant is entitled to a Certificate.

A. A Public Need Exists for the Sterling Facility

As noted in the Application, the FCC in its Report and Order released on May 4, 1981 (FCC Docket No. 79-318) recognized a public need on a national basis for technical improvement, wide area coverage, high quality and competition in mobile telephone service. (App. 1, pp. 5-7). More recently, the Federal Telecommunications Act of 1996 (the “Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. (App. 1, pp. 5-7). Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal wireless telecommunications services of all varieties. (App. 1, pp. 5-7). The Telecommunications Act also expressly promotes competition and seeks to reduce regulation in all aspects of the telecommunications industry in order to foster lower prices for consumers and to

encourage the rapid deployment of new telecommunications technologies. (App. 1, pp. 5-7). The Council took administrative notice of the Telecommunications Act. (Council Adm. Notice 7).

The record contains ample, written evidence and testimony that a 140-foot tower at the Property would allow Cellco to achieve and maintain high quality wireless telecommunications service without interruption from dropped calls and interference. (App. 1, pp. 7-8). This evidence remains unrefuted.

B. Nature of Probable Environmental Impacts

The second step in the statutory review procedure addresses the probable environmental impacts of the proposed Sterling Facility and particularly the following factors:

1. Natural Environment and Ecological Balance

The development of the Sterling Facility has eliminated, to the extent possible, impacts on the natural environment. For example, MCF proposes to construct a 140-foot tower on a vacant and cleared portion of the Property. Development of the Site would require no tree clearing and minimal grading of the 70' x 70' compound area. (App. 1, Tab 1, p. 5; Tr. 1, p. 53). Overall, the limited construction activity at the Site would have a negligible environmental impact on the Property.

2. Public Health and Safety

Cellco has considered several factors in determining that the nature and extent of potential public health and safety impacts resulting from installation of the proposed facility would be minimal or nonexistent.

First, the potential for the proposed tower to fall does not pose an unreasonable risk to health and safety. The proposed tower would be designed and built to meet Electronic Industries Association ("EIA") standards. (App. 1, Tab 1, p. 6). Nonetheless, the record provides a basis for

analysis utilizing the “worst-case” fall zone of the structure (i.e., using a radius equal to the entire height of the tower). The “worst-case” fall zone at the Site would remain entirely within the Property to the north and west, extends into the Exeter Drive right-of-way to the south and would cross the Property boundary to the east onto adjacent Town-owned land. (App. 1, Tab 1 – Abutters Map Sheet S-2). The nearest residential structure would be located in a new residential subdivision known as Sterling Hills Estates. The closest lot in the subdivision remains undeveloped but is located approximately 800 to 900 feet from the proposed tower location. (Tr. 1, pp. 46-47).

Second, worst-case potential public exposure to radio-frequency (“RF”) power density for Cellco operations at the nearest point of uncontrolled access (the base of the tower) would be 8.70% of the FCC standard. Power density levels would drop off rapidly as distance from the tower increases. (App. 1, pp. 15-16, Tab 1, p. 8).

3. Scenic Values

As noted in the Application, the primary impact of any tower is visual. As discussed above, wherever feasible, Cellco avoids construction of a new tower by first attempting to identify existing towers or other tall non-tower structures in or near the search area. (See App. 1, Tab 8). Cellco already has antennas located on many of the towers in the immediate area. (App. 1, pp. 10-11, Tab 6).

The Sterling Facility is proposed to be located within a designated Industrial Park, immediately north of the existing Exeter Energy Power Generating Facility and its approximately 190-foot exhaust stack. (App. 1, pp. 13-14; Tr. 1, pp. 51-52). The visual impact of the tower from surrounding areas is significantly reduced or entirely eliminated by (1) existing views of the Exeter Energy 190-foot exhaust stack to the south; (2) changes in the topography of the area; (3) screening

provided by surrounding trees; and (4) by the design and location of the proposed Sterling Facility. (App. 1, pp. 13-14, Tab 1 and Tab 8; Tr. 1, pp. 51-52).

As the record indicates, the location of the proposed tower has allowed Cellco to install its antennas at the minimum height required to satisfy its coverage objectives in the area while eliminating, to the extent possible, visual impact on the surrounding landscape. (App. 1, Tab 1 and Tab 8).

4. Historical Values

MCF requested that the State Historic Preservation Office (“SHPO”) of the Connecticut Historical Commission (the “Commission”) review the proposed Site and provide a written response. (App. 1, Tab 9). Based on her review of the information submitted, the Deputy State Historic Preservation Officer determined that the development of a telecommunications tower at the Site would have “no effect” on historic, architectural, archaeological resources listed on or eligible for the National Register of Historic Places. (App. 1, Tab 9). Furthermore, Cellco has no reason to believe that there are any other impacts on historical values not addressed by the Commission’s review that are sufficient to warrant a denial of this Application.

5. Recreational Values

There are no recreational activities or facilities at the Property or in the immediate area that would be impacted by development of the Sterling Facility as proposed. (App. 1, Tab 1, pp. 4-5, Tab 8).

6. Forests and Parks

There are no State Forests or parks located within two-miles of the Property. (App. 1, Tab 1, pp. 4-5, Tab 8).

7. Air and Water Quality

a. Air Quality. The equipment at the Site would generate no air emissions under normal operating conditions. (App. 1, Tab 1, p. 7). During power outage events and periodically for maintenance purposes, Cellco would utilize an on-site emergency backup generator to provide emergency power to the Sterling Facility. The use of the generator during these limited periods would result in minor levels of emissions. Pursuant to R.C.S.A. § 22a-174-3, Cellco will obtain an appropriate permit from the Connecticut Department of Environmental Protection (“DEP”) Bureau of Air Management prior to installation of the proposed generator. (App. 1, Tab 1, p. 7).

b. Water Quality. The proposed Sterling Facility would not utilize water, nor discharge substances into any surface water, groundwater, or public sewage system. There are no lakes, ponds, rivers, streams, wetlands or other regulated water bodies located at the Site. Thus, the proposed facility would not impact local water quality. (App. 1, Tab 1, p. 7).

Cellco proposes to install an emergency back-up generator within the equipment building for use during power outages. A diesel fuel “belly” tank would be installed as an integral part of the generator unit. To avoid the potential for impact to area ground and surface waters, the proposed tank would be double-walled and the equipment shelter would include a containment system capable of containing up to one and a half times the fuel capacity of the generator. (App. 1, pp. 16-17).

8. Fish and Wildlife

As a part of its National Environmental Policy Act (“NEPA”) Checklist, Cellco received comments on the proposed Sterling Facility from the U.S. Department of Interior, Fish and Wildlife Service (“USFWS”) and the Environmental and Geographic Information Center of the DEP. Both

the USFWS and the DEP have confirmed that no known populations of Federal or State Endangered, Threatened or Special Concern Species occur at the Site. (App. 1, pp. 14-15, Tab 9).

C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts

Following a determination of the probable environmental impacts of the proposed facility, Connecticut General Statutes § 16-50p requires that the Applicant demonstrate why these impacts “are not sufficient reason to deny the Application.” Conn. Gen. Stat. § 16-50p(a)(3). The record establishes that the impacts from the Sterling Facility would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application.

As discussed above, the only potential adverse impact from the proposed Site involves “scenic values.” As the record overwhelmingly demonstrates, the proposed Site would have minimal impacts on scenic values in the area. (App. 1, pp. 13-14, Tab 8). These limited aesthetic impacts may be, and in this case are, outweighed by the public benefit derived from the establishment of the Sterling Facility. Unlike many other types of development, telecommunications facilities do not cause indirect environmental impacts, such as increased traffic and related pollution.

The limited aesthetic and environmental impacts of the proposed facility can be further mitigated by the sharing of the Sterling Facility. The proposed facility is capable of supporting additional carriers.

In sum, the potential environmental impacts from the proposed facility would be minimal when considered against the benefits to the public. These impacts are insufficient to deny the

Application. The Site, therefore, satisfies the criteria for a Certificate pursuant to Connecticut General Statutes § 16-50p, and the Applicant's request for a Certificate should be granted.

IV. CONCLUSION

Based on the evidence contained in the record and the arguments presented above, Cellco has satisfied the criteria in Connecticut General Statutes Section 16-50p. Accordingly, the issuance of a Certificate to the Applicant is appropriate and fully consistent with the Act.

Respectfully submitted,

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

By: 

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Its Attorney